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PAMELA ROGERS

FILED

FEB 26 1998

Commission on
Judicial Performance

STATE OF CALIFORNIA

BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

8 INQUIRY CONCERNING JUDGE) VERIFIED ANSWER TO NOTICE
9 PAMELA ROGERS,) OF FORMAL PROCEEDINGS
)

10 NO. 144.)
)

11 _____)
12 Respondent, Judge Pamela Rogers, by and through her attorneys,
13 answers the Notice of Formal Proceedings as follows:

14 Respondent's Response to Preamble:

15 Respondent denies each of the allegations of the Preamble.
16 Respondent shows that although she has had to deal with various
17 medical problems since becoming a Judge, she has done so properly
18 and as instructed by her physicians. Indeed, much of the delay in
19 fully resolving the medical problems was due to the "conventional"
20 care provided by various HMO physicians who initially treated
21 Respondent. See Declaration of Karunyan Arulanantham, M.D.,
22 ¶¶10-11. Respondent shows that the medical problems were only
23 resolved successfully when Respondent, upon her own initiative and
24 at increased expense, consulted various experts without referrals
25 from her primary care HMO physicians. See Declaration of Karunyan
26 Arulanantham, M.D., ¶¶12 and 15-17. In fact, Respondent eventually
27 left her HMO health insurance plan in favor of an indemnity health
28 insurance plan in order to obtain appropriate treatment and care.

1 Respondent further shows that her treating physicians have
2 opined that the narcotics previously prescribed to prevent and
3 treat her migraine headaches would have caused impairment only in
4 the context of treatment of a severe migraine episode, and that on
5 such occasions Respondent would not have gone in to work. See
6 Declaration of Sahin Sadik, M.D., ¶¶5-17 and Declaration of Jeffrey
7 Blodgett, M.D., ¶12. However, any questions about this prescribed
8 treatment regimen have been resolved since at least April 1997,
9 when Respondent, again, upon her own initiative and at her own
10 expense, had her medications completely re-evaluated by experts at
11 Scripps Memorial Hospital with the goal of discontinuing use of
12 narcotic medications. See Declaration of Sahin Sadik, M.D.,
13 ¶¶19-22. As a result, Respondent's migraines are now controlled
14 exclusively through the use of non-narcotic medications. See
15 Declaration of Sahin Sadik, M.D., ¶22; Declaration of Jeffrey
16 Blodgett, M.D., ¶13; Declaration of David Hines, RPH, Pharm D. The
17 Commission's own expert has acknowledged that the medications
18 currently used by Judge Rogers are acceptable for use by a judicial
19 officer. See Notes of Interview of Richard Sandor, M.D., p. 147,
20 ¶¶3-4.

21 Respondent's Answer to Count I:

22 Respondent incorporates her response to the Preamble as if
23 fully set forth herein.

24 1. Respondent denies being "habitually intemperate" in her
25 use of the medications prescribed by her physicians. Respondent
26 admits to having taken and having been administered various
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1 medications for migraine headache, and that at various times
2 between January 1995, and April, 1997, these medications included
3 Demoral, Morphine, and Inderal.¹ Demoral and Morphine are
4 narcotic; Inderal is not. See Declaration of David Hines, RPH,
5 Pharm D, ¶10. At all times material hereto, the medications were
6 either taken by Respondent as prescribed by her treating physician
7 or were administered by a physician in the doctor's office or in an
8 Urgent Care or Emergency Room setting, and were taken and
9 administered in response to a legitimate medical need. See
10 Declaration of Karunyan Arulanantham, M.D., ¶¶18-19. See also,
11 Declaration of Sahin Sadik, M.D.; Declaration of Jeffrey Blodgett,
12 M.D.; Declaration of David Hines, RPH, Pharm D. Respondent further
13 shows that she has not used narcotic medications since April of
14 1997. See Declaration of Sahin Sadik, M.D., ¶22; Declaration of
15 Jeffrey Blodgett, M.D., ¶13; Declaration of David Hines, RPH, Pharm
16 D.

17 2. Respondent admits that the prescribed medications were
18 administered over a period of time, as prescribed by treating
19 physicians, orally, or intramuscularly, or intravenously. The
20 medications were administered intravenously only by a physician in
21 an Urgent Care or Emergency Room setting or when hospitalized for
22 surgery. See Declaration of David Hines, RPH, Pharm D, ¶9.
23 Further, Respondent shows that she consistently took less of the
24 narcotic medications than were prescribed by her treating
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26 ¹ The Commission's separate listing of Morphine and MS Contin is redundant because
27 MS Contin is a form of Morphine.
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1 physicians and aggressively sought to reduce her use of narcotic
2 medications. See Declaration of Sahin Sadik, M.D., ¶¶12-15;
3 Declaration of Karunyan Arulanantham, M.D., ¶19. Again, Respondent
4 eventually had her medications completely re-evaluated by experts
5 at Scripps Memorial Hospital, without a referral from her treating
6 physician, with the goal of discontinuing all use of narcotic
7 medications voluntarily. Respondent did so despite the fact that
8 her treating physician did not view such action as medically
9 necessary. See Declaration of Sahin Sadik, M.D., ¶19.

10 3. Respondent denies that she "became dependent on
11 prescription drugs, including narcotics" insofar as this charge
12 implies misconduct. First, there is no question but that
13 Respondent was not "addicted" to the prescription medications. See
14 Declaration of Sahin Sadik, M.D., ¶¶20-24; Declaration of Jeffrey
15 Blodgett, M.D., ¶¶7-10; Declaration of David Hines, RPH, Pharm D,
16 ¶¶6-8; Declaration of Karunyan Arulanantham, M.D., ¶19. To the
17 extent that Respondent may have become "dependent" on any
18 prescription medication, any such "dependence" was a direct result
19 of her underlying medical condition and her medical treatment,
20 including the failure of many other treatment regimens. See
21 Declaration of Sahin Sadik, M.D., especially ¶24. As set forth
22 above, any issues related to whether Respondent was "dependent"
23 upon medications objectionable to the Commission were resolved at
24 least by April, 1997. See Declaration of Sahin Sadik, M.D., ¶22;
25 Declaration of Jeffrey Blodgett, M.D., ¶13; Declaration of David
26 Hines, RPH, Pharm D. Since that time, Respondent has used only
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1 medications that the Commission's own expert has acknowledged are
2 acceptable for use by a judicial officer. See Notes of Interview
3 of Richard Sandor, M.D., p. 147, ¶¶3-4.

4 4. Respondent submits the following information relevant to
5 her medical condition and use of medications:

6 a. Respondent has suffered from migraine headaches since
7 adolescence. Despite this condition, Respondent had performed
8 outstandingly as a law student, a law professor, and a Deputy
9 District Attorney, before becoming a Judge. See Declaration of
10 Head Deputy District Attorney Stephen L. Cooley, ¶¶4-6; Declaration
11 of Assistant Head Deputy District Attorney Steven D. Ogden, ¶¶3-4;
12 Declaration Of Deputy District Attorney Robert Foltz, ¶¶7-8;
13 Declaration of Deputy Public Defender Earl Siddall, ¶¶6-10;
14 Declaration of Deputy Alternate Public Defender Richard Loa, ¶¶4-7
15 and 12; Notes of Interview of Deputy Alternate Public Defender
16 Avrum Harris, p. 53 (bottom of page); Declaration of Alan J.
17 Skobin, Esq., ¶¶3-6.

18 b. As acknowledged by the Commission's own expert,
19 Respondent's migraines are related to fluctuations or imbalances in
20 estrogen levels in her body. See Declaration of Karunyan
21 Arulanantham, M.D., ¶¶13-17; Notes of Interview of Richard Sandor,
22 M.D., p. 148. This is significant because Respondent's migraine
23 headaches became very severe in the fall of 1992 during a late life
24 pregnancy. See Declaration of Karunyan Arulanantham, M.D., ¶¶4-7;
25 Letter from William Jack Copeland, M.D. The migraine headaches and
26 accompanying nausea were so severe that Respondent was fed
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1 intravenously and was given morphine subcutaneously to control the
2 pain. See Declaration of Karunyan Arulanantham, M.D., ¶¶5-6;
3 Letter from William Jack Copeland, M.D. Without this therapy,
4 Respondent's ability to carry her baby to term would have been
5 threatened. See Declaration of Karunyan Arulanantham, M.D., ¶7;
6 Letter from William Jack Copeland, M.D.

7 c. Respondent's migraines improved significantly after she
8 delivered her daughter in January of 1993, and thereafter while she
9 was nursing her daughter. However, after she stopped nursing,
10 severe migraines again became a problem. See Declaration of
11 Karunyan Arulanantham, M.D., ¶8. This pattern corresponds to
12 migraines triggered by estrogen changes or imbalances because
13 nursing is associated with decreased ovarian function. See
14 Declaration of Karunyan Arulanantham, M.D., ¶9. Respondents'
15 doctors recognized the relationship between her migraines and
16 estrogen fluctuations in late 1994. They recommended that
17 Respondent have a complete hysterectomy including removal of the
18 ovaries to stabilize Respondent's hormone levels and to cure
19 apparent endometriosis. See Declaration of Karunyan Arulanantham,
20 M.D., ¶13 and Letter from William Jack Copeland, M.D.
21 Unfortunately, Respondent's migraines did not improve following the
22 hysterectomy, apparently because her HMO physicians initially
23 prescribed much higher doses of estrogen than she could tolerate.
24 See Declaration of Karunyan Arulanantham, M.D., ¶15-16. This
25 problem was resolved only after Respondent, on her own initiative
26 and without a referral from her primary care physicians, consulted
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1 an endocrinologist at Scripps Memorial Hospital who specializes in
2 female hormonal problems. Id. As a result of that consultation,
3 Respondent now uses a very low-dose estrogen replacement patch that
4 is not available in the State of California and must be procured
5 from Mexico.

6 d. Respondent's migraine condition was not amenable to
7 successful treatment until the appropriate hormone therapy was
8 established and her hormone levels were stabilized. See
9 Declaration of Karunyan Arulanantham, M.D., ¶17. Unfortunately,
10 stabilization of the hormone levels was further complicated by the
11 fact that Respondent required two additional surgeries for
12 endometriosis. See Declaration of Karunyan Arulanantham, M.D.,
13 ¶14. It appears that these two additional surgeries were necessary
14 because all of the endometrial tissue had not been properly removed
15 at the time of the hysterectomy. Id. See also Letter from William
16 Jack Copeland, M.D.

17 e. Treatment of Respondent's migraine condition was also
18 complicated by the fact that she proved unable to tolerate various
19 medications commonly used to abort migraines or the associated
20 nausea. For example, Respondent was unable to take Imitrex because
21 it induced severe nausea as well as heart palpitations. See
22 Declaration of Sahin Sadik, M.D., ¶14. Respondent also had a
23 history of allergy to Compazine, Sansert, as well as various
24 related medications. See e.g., AVHMC ER Records, p. 233.

25 f. Respondent's physicians eventually resorted to
26 prophylactic use of narcotics to stabilize Respondent's condition
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1 and to reduce the incidence and severity of her migraine headaches.
2 See Declaration of Sahin Sadik, M.D., ¶¶10-11. Again, however, the
3 narcotics were not prescribed or taken in levels sufficient to
4 cause cognitive impairment except when Respondent experienced a
5 very severe migraine, at which time Respondent would not go in to
6 work. See Declaration of Sahin Sadik, M.D., ¶¶5-17 and Declaration
7 of Jeffrey Blodgett, M.D., ¶12. Respondent consistently took less
8 of the narcotic medications than were prescribed and aggressively
9 sought to reduce her use of narcotic medications. See Declaration
10 of Sahin Sadik, M.D., ¶¶12-15; Declaration of Karunyan
11 Arulanantham, M.D., ¶19. Although there were times that Respondent
12 was ill at work, either because of a low level migraine or adverse
13 reaction to a medication, Respondent fulfilled her job
14 responsibilities.

15 g. As set forth above, and as Respondent advised the
16 Commission in her letter of June 30, 1997, she took a five-week
17 medical leave of absence in April and May of 1997 in order to have
18 her medications completely re-evaluated by experts at Scripps
19 Memorial Hospital with the goal of discontinuing all use of
20 narcotic medications. During this leave of absence, she completed
21 a twenty-eight day residential chemical dependency program at the
22 hospital. Respondent did so without a referral from her treating
23 physician and despite the fact that her treating physician did not
24 view such action as medically necessary. See Declaration of Sahin
25 Sadik, M.D., ¶19. Again, as a result of that re-evaluation,
26 Respondent's medications have been changed so that Respondent no
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1 longer takes any narcotic medications whatsoever and now takes only
2 medications that are unquestionably consistent with her role as a
3 judicial officer. See Declaration of Sahin Sadik, M.D., ¶22;
4 Declaration of Jeffrey Blodgett, M.D., ¶13; Declaration of David
5 Hines, RPH, Pharm D.; Notes of Interview of Richard Sandor, M.D.,
6 p. 147, ¶¶3-4.

7 h. It is indeed ironic that these formal proceedings were
8 initiated immediately after Respondent's successful treatment at
9 Scripps Memorial Hospital. As stated by Assemblyman George Runner,
10 in his Declaration to the Commission:

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12 ... Judge Rogers did nothing more than take medications as
13 prescribed by a physician. She could have continued on this
14 course and could have appropriately pled medical
15 justification. Instead, she took extraordinary steps, at
16 great personal expense and sacrifice, to have her medications
17 completely re-evaluated and changed so that her conduct would
18 be above reproach.

19 ... Judge Rogers should be congratulated on her integrity,
20 courage and strength of character. She should not be
21 sanctioned for circumstances that arose from a medical
22 condition, the severity of which originated from a late life
23 pregnancy, especially now that the medical issues have been
24 resolved.

25 See Declaration of Assemblyman George Runner, ¶¶10-11.

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27 Respondent's Answer to Count II:

28 Respondent incorporates her response to the Preamble and to
Count I as if fully set forth herein.

5. Respondent denies that her use of medication has
substantially interfered with the performance of her judicial
duties. See Declaration of Court Administrator Janice Caler;

1 Declaration of Assistant Court Administrator, Fran Burnett; Letter
2 from Superior Court, North District, Presiding Judge Frank Y.
3 Jackson; Letter from former Municipal Court Presiding Judge Howard
4 Swart; Letter from Municipal Court Judge and former Chair of the
5 Los Angeles County Municipal Court Judges Association Richard E.
6 Spann; Declaration of Assistant Head Deputy District Attorney
7 Steven D. Ogden, ¶¶5-7; Declaration of Deputy Public Defender Earl
8 Siddall, ¶¶15-21; Declaration of Deputy Alternate Public Defender
9 Richard Loa, ¶¶13-23; Declaration of Narcotics Detective Craig
10 Husbands, ¶¶4-13; Declaration of Narcotics Detective Russell
11 Bailey, ¶¶4-9; Declaration of Commercial Crimes Detective Edward
12 Gregory Everett, ¶¶3-6; Declaration of Michael Eberhardt, Esq.,
13 ¶¶4-12; Declaration of Shawn E. McMenemy, Esq., ¶¶3-6; Declaration
14 of Christopher Ramsey, Esq.; Notes of Interview of David Ambill,
15 Esq., p. 6; Notes of Interview of Deputy District Attorney Lisa
16 Cheung, p. 30; Notes of Interview of Deputy District Attorney
17 Carlos Chung, p. 32; Notes of Interview of Deputy District Attorney
18 John Evans, p. 46; Notes of Interview of Deputy District Attorney
19 Joseph Payne, p. 141; Letter of Support and Endorsement from
20 Antelope Valley Bar Association.

21 6. Respondent denies that her use of medication has caused
22 excessive absences or irregular work hours. Respondent notes that
23 she has taken less vacation time than has been taken by her peers
24 to compensate for the absences caused by medical necessity. See
25 Declaration of Fran Burnett, ¶20. The remaining absences have been
26 medically necessary to evaluate or treat acute illness, including
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1 not only treatment for migraine headache, but also two separate
2 surgeries for endometriosis. Respondent's right to take such leave
3 is protected by the federal Family & Medical Leave Act of 1993 (29
4 U.S.C. §§ 2601-2653) and the California Family Care and Medical
5 Leave Act (Cal. Govt. Code § 12945.2). It is also significant that
6 Respondent's predecessor, Judge Ian Grant, had medical absences
7 arising from knee surgery that exceeded Respondent's absences,
8 without complaint or incident. See Declaration of Court
9 Administrator Janice Caler, ¶14. Similarly, Superior Court Judge
10 Frank Jackson had a medical leave of absence arising from an injury
11 sustained in an automobile accident that exceeded Respondent's
12 absences, also without complaint or incident. Id.

13 7. Respondent denies that she knowingly failed to notify
14 court administration promptly when she was not coming in to work.
15 At all such times Respondent either called court administration as
16 soon as she knew that she would not be coming in or took reasonable
17 steps to have her husband, who was then an attorney in private
18 practice, notify the court that she would not be coming in.
19 Respondent is aware, however, of two occasions when court
20 administration may not have received prompt notification that she
21 would not be for work. On one occasion, Respondent's husband
22 notified then Presiding Judge Howard Swart that she would not be in
23 and assumed that Judge Swart would in turn advise court
24 administration. Apparently Judge Swart did not do so because
25 Respondent was subsequently asked by court administration to also
26 notify administration directly. On another occasion, Respondent's
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1 husband waited until what he thought was a reasonable hour of the
2 morning (approximately 7:30 a.m.) before making the call to court
3 administration. Court administration subsequently requested that
4 the notification be given earlier, when possible, even if it meant
5 waking the administrator.

6 8. Respondent denies that she has treated attorneys or court
7 staff rudely. See Declaration of Court Administrator Janice Caler,
8 ¶¶5-6; Declaration of Assistant Court Administrator, Fran Burnett,
9 ¶¶4-7; Declaration of Respondent's Bailiff John Crnkovich, ¶5;
10 Declaration of Courtroom Clerk Susan Komins, ¶8; Declaration of
11 Court Reporter Kathryn Howell, ¶¶4-5; Declaration of Assistant Head
12 Deputy District Attorney Steven D. Ogden, ¶9; Declaration of Deputy
13 Public Defender Earl Siddall, ¶20; Declaration of Deputy Alternate
14 Public Defender Richard Loa, ¶16; Declaration of Narcotics
15 Detective Craig Husbands, ¶14; Declaration of Narcotics Detective
16 Russell Bailey, ¶7; Declaration of Commercial Crimes Detective
17 Edward Gregory Everett, ¶5; Declaration of Michael Eberhardt, Esq.,
18 ¶6; Declaration of Shawn E. McMenemy, Esq., ¶6; Declaration of
19 Christopher Ramsey, Esq.; Declaration of Robert H. Wyman, Esq.;
20 Notes of Interview of Deputy District Attorney Lisa Cheung, p. 30;
21 Notes of Interview of Deputy District Attorney Carlos Chung, p. 32;
22 Notes of Interview of Deputy District Attorney John Evans, p. 46;
23 Notes of Interview of Deputy District Attorney Joseph Payne, p.
24 141; Letter of Support and Endorsement from Antelope Valley Bar
25 Association. Respondent further notes that it appears that the
26 attorneys who have claimed she has been rude are attorneys who
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1 deliberately conduct themselves in a rude and confrontational
2 manner. See Declaration of Assistant Head Deputy District Attorney
3 Steven D. Ogden, ¶7-8; Declaration of Deputy Public Defender Earl
4 Siddall, ¶¶22-24; Declaration of Deputy Alternate Public Defender
5 Richard Loa, ¶¶20-22; Declaration of Bailiff Rex Taylor, ¶¶3-10;
6 Declaration of Court Administrator Janice Caler, ¶¶18-19.

7 9. Respondent denies that she has managed the court calendar
8 inefficiently. See Declaration of Assistant Court Administrator,
9 Fran Burnett, ¶¶8-19; Declaration of Court Reporter Kathryn Howell,
10 ¶6; Declaration of Deputy Public Defender Earl Siddall, ¶¶15-17;
11 Declaration of Narcotics Detective Craig Husbands, ¶¶12-13;
12 Declaration of Narcotics Detective Russell Bailey, ¶9; Declaration
13 of Commercial Crimes Detective Edward Gregory Everett, ¶5. Indeed,
14 Court Administration has credited Respondent with improving the
15 efficiency of the Antelope Judicial District by, upon becoming
16 Presiding Judge, putting a stop to abusive practices that had
17 historically plagued and had seriously interfered with the
18 efficient administration the Court. See Declaration of Court
19 Administrator Janice Caler, ¶¶10-12; Declaration of Assistant Court
20 Administrator, Fran Burnett, ¶¶30-35.

21 10. Respondent admits that at times she became ill while at
22 work and that the illness and the medications taken for the illness
23 may have had some effect upon her performance and demeanor. Some
24 of the non-narcotic medications prescribed by Respondent's
25 physicians have the side effect of drying the mouth and causing
26 difficulty speaking. See Declaration of Sahin Sadik, M.D., ¶7.

1 Another non-narcotic medication previously used by Respondent
2 caused severe nausea and heart palpitations. See Declaration of
3 Sahin Sadik, M.D., ¶14. It is possible that persons who were
4 present at such times may have concluded that such symptoms were
5 caused by intemperate use of narcotic medications. They were not.
6 See Declaration of Sahin Sadik, M.D., ¶¶5-17; Declaration of
7 Jeffrey Blodgett, M.D., ¶12; Declaration of Narcotics Detective
8 Craig Husbands, ¶7; Declaration of Narcotics Detective Russell
9 Bailey, ¶7; Declaration of Commercial Crimes Detective Edward
10 Gregory Everett, ¶3-6; Declaration of Assistant Head Deputy
11 District Attorney Steven D. Ogden, ¶6; Declaration of Deputy Public
12 Defender Earl Siddall, ¶21; Declaration of Deputy Alternate Public
13 Defender Richard Loa, ¶¶21-23; Declaration of Michael Eberhardt,
14 Esq., ¶8. Respondent further notes that specific conduct claimed
15 to evidence misuse of narcotics is very easily explained. For
16 example, the claim that Respondent appears "to speak to an empty
17 witness stand" arises from the fact that the Court Reporter is
18 seated immediately adjacent to the witness stand. Respondent
19 sometimes turns her head and projects her voice towards the Court
20 Reporter to insure that she is easily heard. In any event, as set
21 forth above, Respondent's medications have been changed so that
22 Respondent no longer takes any narcotic medications whatsoever and
23 now takes only medications that are unquestionably consistent with
24 her role as a judicial officer. See Declaration of Sahin Sadik,
25 M.D., ¶22; Declaration of Jeffrey Blodgett, M.D., ¶13; Declaration
26 of David Hines, RPH, Pharm D.; Notes of Interview of Richard
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1 | Sandor, M.D., p. 147, ¶¶3-4.

2 | Respondent's Answer to Count III:

3 | Respondent incorporates her response to the Preamble and to
4 | Counts I and II as if fully set forth herein.

5 | 11. Respondent admits that the seven cases listed by the
6 | Commission remained undecided in excess of ninety days. Respondent
7 | further admits that she received her judicial salary while these
8 | matters were under submission. However, in mitigation Respondent
9 | shows the Commission the following:

10 | a. Government Code § 68210, as cited by the Commission,
11 | provides that "no judge of a court of record shall receive his
12 | salary" unless he executes an "affidavit stating that no cause
13 | before him remains pending and undetermined for 90 days after it
14 | has been submitted for decision". During the time frame in
15 | question, however, none of the judges of the Antelope Judicial
16 | District executed salary affidavits. See Declaration of Assistant
17 | Court Administrator, Fran Burnett, ¶¶21-24.

18 | b. During the entirety of 1996, Municipal Court Judge Richard
19 | Spann served as Chairman of the Los Angeles County Municipal Court
20 | Judges Association and the Antelope Judicial District was provided
21 | only a Commissioner to sit in his absence. Inasmuch as the defense
22 | bar has always refused to stipulate to allowing a Commissioner to
23 | hear preliminary hearings or trials, this circumstance severely
24 | impacted the efficiency of the Court and resulted in more work for
25 | the remaining Judges, including Respondent.

26 | c. Then in June, 1996, one of the remaining Judges, former
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1 Municipal Court Judge Chesley McKay, was elevated to the Superior
2 Court. The Governor did not appoint a replacement until nine
3 months later, in March of 1997. Although the Antelope Judicial
4 District was intermittently provided with a series of visiting
5 judges, this circumstance also substantially interfered with the
6 smooth running of the Court and created additional work for all of
7 the remaining Judges, including Respondent.

8 d. Three of the cases listed by the Commission were
9 Municipal Court cases tried by Respondent in late 1996. Respondent
10 had been assigned to handle the Municipal Court civil calendar in
11 January of 1996, while remaining responsible for a morning criminal
12 calendar, criminal jury trials and other duties. See Declaration of
13 Assistant Court Administrator, Fran Burnett, ¶25. The Judge
14 previously assigned to handle the civil calendar had been assigned
15 only the civil calendar during the prior two year period and yet
16 had not tried any significant number of civil cases. As a result,
17 Respondent inherited a substantial number of civil cases waiting to
18 go to trial. See Declaration of Assistant Court Administrator,
19 Fran Burnett, ¶26. Even though Respondent was also responsible for
20 a morning criminal calendar, she nevertheless was able to bring a
21 large number of civil cases to trial and was thereby able to
22 substantially eliminate the backlog of civil cases waiting to go to
23 trial. See Declaration of Assistant Court Administrator, Fran
24 Burnett, ¶27. While it is true that the three Municipal Court
25 cases listed by the Commission did remain under submission for in
26 excess of ninety days, they did at least get tried and resolved and
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1 | did so under very difficult circumstances. See Declaration of
2 | Assistant Court Administrator, Fran Burnett, ¶¶25-29.

3 | e. The remaining cases listed by the Commission are Superior
4 | Court law and motion matters heard by Respondent. In this regard,
5 | in the fall of 1996, Respondent was approached by the Presiding
6 | Judge of the North District of the Superior Court, Frank Y.
7 | Jackson, to take over hearing the Superior Court law and motion
8 | matters that could not be heard by the local Referee due to the
9 | failure of the parties to stipulate to the Referee. Respondent
10 | felt some obligation to agree to handle the "non-stip" Superior
11 | Court law and motion matters because by this time the State was
12 | pressing for coordination between the Municipal and Superior Court
13 | and because she was the junior Municipal Court Judge. Respondent
14 | agreed to do so upon Judge Jackson's agreement that no more than
15 | two law and motion matters would be scheduled for hearing per week.
16 | Unfortunately, the Superior Court Department that had been hearing
17 | the matters simply transferred all of the matters to Respondent's
18 | calendar without any regard for the agreement reached with Judge
19 | Jackson and without making any effort to coordinate the setting of
20 | the matters with Respondent's clerk.

21 | f. The burden of the Superior Court law and motion calendar
22 | proved unmanageable. In this regard, Respondent was not given any
23 | time off from her full time Municipal Court responsibilities to
24 | handle the Superior Court law and motion matters. See Declaration
25 | of Assistant Court Administrator, Fran Burnett, ¶29. Respondent
26 | attempted to solicit help from other Municipal Court judges but no
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1 one was willing to assist with the Superior Court matters.

2 g. When Respondent became Presiding Judge of the Municipal
3 Court in January, 1997, she approached Judge Jackson to seek relief
4 from the burden of the Superior Court law and motion calendar.
5 However, after speaking to Judge Jackson, Respondent resolved to
6 "hang on" until the Governor appointed a replacement for Judge
7 McKay, at which time she expected to transfer the "non-stip"
8 Superior Court law and motion matter to the new judge. This in
9 fact occurred when the Governor appointed Respondent's husband,
10 Judge Randolph Rogers, to fill Judge McKay's position in March of
11 1997.

12 h. Respondent further notes that she attempted to take a week
13 off in March of 1997, to catch up on the matters that she had under
14 submission. However, the shortage of judges within the Antelope
15 Judicial District and the press of the burden of the criminal
16 calendar forced her to come in to work to handle criminal matters
17 on virtually every day of the week that she tried to take off to
18 handle the submitted civil matters.

19 i. Respondent further notes that in recognition of the
20 substantial burden of the Superior Court law and motion calendar
21 and of the fact that Judge Randolph Rogers (as had Respondent)
22 handles this calendar in addition to a full time Municipal Court
23 calendar, the current Clerk of the law and motion department has
24 started setting only one motion for summary judgment per week
25 together with only one other less burdensome motion. This sharply
26 contrasts with the prior practice under which Respondent and her
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1 successor often had several motions for summary judgment or other
2 complicated motions set for a single week.

3 j. Notwithstanding the forgoing, four of the cases listed by
4 the Commission were decided less than one month late. Three of the
5 cases listed by the Commission were decided less than two months
6 late. Respondent was forced to recuse herself in the remaining
7 case due to conflicts that arose while the case was under
8 submission.

9 k. Respondent further notes that she did not request payment
10 for the Superior Court assignment until after all of the Superior
11 Court cases that she had under submission had been decided. With
12 respect to payment for her work for the Municipal Court, the
13 administration of the Municipal Court has verified that it did not
14 wish to have Respondent's judicial salary withheld because she was
15 doing more than her share of the work. See Declaration of
16 Assistant Court Administrator, Fran Burnett, ¶¶24-29.

17 **FIRST AFFIRMATIVE DEFENSE**

18 The issues raised in Counts One and Two relating to
19 Respondent's use of prescription medications are now moot because
20 Respondent's medications have been changed so that Respondent no
21 longer takes any narcotic medications whatsoever and now takes only
22 medications that are unquestionably consistent with her role as a
23 judicial officer. See Declaration of Sahin Sadik, M.D., ¶22;
24 Declaration of Jeffrey Blodgett, M.D., ¶13; Declaration of David
25 Hines, RPH, Pharm D.; Notes of Interview of Richard Sandor, M.D.,
26 p. 147, ¶¶3-4. Respondent's migraines are now well controlled and
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1 neither her migraines nor the medications taken to control them
2 significantly affect Respondent's performance as a judicial
3 officer.

4 **SECOND AFFIRMATIVE DEFENSE**

5 To the extent that issues remain with respect to her migraines
6 or the medications taken to control them, such issues arise from a
7 medical condition that is a disability within the meaning of the
8 Americans With Disabilities Act (42 U.S.C. § 12101 et seq.) and the
9 Rehabilitation Act (29 U.S.C. § 701 et seq.). Title II of the ADA
10 (42 U.S.C. §§ 12131-12165) prohibits the Commission from proceeding
11 against Respondent based upon her real or perceived disabilities.
12 See 42 U.S.C. § 28 C.F.R. §§ 35.102(a) and 35.240; Doe v. Judicial
13 Nominating Comm'n for Fifteenth Judicial Circuit of Florida, 906
14 F.Supp. 1534 (S.D. Fla. 1995); State ex rel Oklahoma Bar Ass'n v.
15 Busch 919 P.2d 1114 (Okla. 1996). To the extent that it remains an
16 issue, the ADA requires reasonable accommodation of Respondent's
17 medical condition.²

19 ² As amended effective January 1, 1998, the California Rules of Court also require all
20 state courts to provide reasonable accommodation to court employees with such medical
21 conditions. Appendix to California Rules of Court, Division I (Standards of Judicial
22 Administration Recommended by the Judicial Council), § 1.4 (Reasonable Accommodation for
Court Personnel) added by Order No. 97-187, provides:

23 At least to the extent required by state and federal law, each court should
24 evaluate existing facilities, programs, and services available to employees to
25 ensure that no barriers exist to prevent otherwise-qualified employees with
26 known disabilities from performing their jobs or participating fully in court
27 programs or activities.
28

THIRD AFFIRMATIVE DEFENSE

To the extent that issues remain with respect to her migraines or the medications taken to control them, the California Unruh Civil Rights Act (Civil Code § 51) prohibits the Commission from proceeding against Respondent based on her real or perceived disabilities.

FOURTH AFFIRMATIVE DEFENSE

To the extent that issues remain with respect to her migraines or the medications taken to control them, the California Fair Employment And Housing Act (Govt. Code §§ 12900-12996) prohibits the Commission from proceeding against Respondent based on her real or perceived disabilities.

FIFTH AFFIRMATIVE DEFENSE

The federal Family & Medical Leave Act of 1993 (29 U.S.C. §§ 2601-2653) and the California Family Care And Medical Leave Act (Govt. Code § 12945.2) protect Respondent's right to take leave for treatment of a serious medical condition.

SIXTH AFFIRMATIVE DEFENSE

The issues raised in Counts One and Two relating to Respondent's use of prescription medications arose as a complication of Respondent's pregnancy and as a result of her sex and sex-related medical conditions. In this regard, migraines disproportionately affect women and pregnancy, estrogen imbalance, hysterectomies and endometriosis exclusively affect women. Title VII of the Federal Civil Rights Act (42 U.S.C. §§ 2000e(k), 2000e-2(a)), prohibits the Commission from proceeding against

1 Respondent based on her pregnancy or her sex or sex-related medical
2 conditions.

3 **SEVENTH AFFIRMATIVE DEFENSE**

4 The Constitution of the State of California, Article I,
5 Section 8, prohibits the Commission from proceeding against
6 Respondent based on her sex, including medical conditions related
7 to pregnancy, childbirth, and other gender-specific medical
8 conditions.

9 **EIGHTH AFFIRMATIVE DEFENSE**

10 The California Unruh Civil Rights Act (Civil Code § 51)
11 prohibits the Commission from proceeding against Respondent based
12 on medical conditions related to pregnancy and other gender-
13 specific medical conditions.

14 **NINTH AFFIRMATIVE DEFENSE**

15 The California Fair Employment And Housing Act (Govt. Code
16 §§ 12900-12996) prohibits the Commission from proceeding against
17 Respondent based on her sex, pregnancy-related medical conditions,
18 or other gender-specific medical conditions.

TENTH AFFIRMATIVE DEFENSE

The federal Family & Medical Leave Act of 1993 (29 U.S.C. §§ 2601-2653) and the California Family Care And Medical Leave Act (Govt. Code § 12945.2) protect Respondent's right to take leave for treatment of serious medical conditions, including complications of pregnancy and other gender-specific medical conditions.

Dated: February 25, 1998.

Respectfully submitted,
LAW OFFICES OF EPHRAIM MARGOLIN

By: K. Paul for
EPHRAIM MARGOLIN, Attorney for
Judge Pamela Rogers

1
2
3 VERIFICATION

4 I am the Respondent in the above entitled action; I have read the foregoing Verified
5 Answer To Notice Of Formal Proceedings, know its contents, and believe them to be true.
6

7 I, Pamela Rogers, declare under penalty of perjury under the laws of the State of
8 California that the foregoing is true and correct and that this Verification is executed this the
9 22 day of February, 1998, at Lancaster, California.

10
11 
12 _____
13 PAMELA ROGERS
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PROOF OF SERVICE

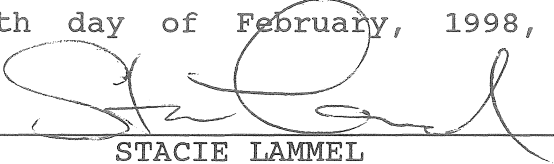
I declare under penalty of perjury under the laws of the State of California that the following is true and correct:

I am a citizen of the United States and am employed in the City and County of San Francisco. I am over the age of eighteen (18) years and am not a party to the within above-entitled action; my business address is 240 Stockton Street, Third Floor, San Francisco, California 94108.

I served the Answer To Notice Of Formal Proceedings by causing a true copy to be personally served as follows:

Jack Coyle
Trial Counsel
101 Howard Street, Suite 320
San Francisco, CA 94105

Executed this the 26th day of February, 1998, at San Francisco, California.


STACIE LAMMEL